

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

KIRBY INLAND MARINE, LP

Plaintiff,

V.

FPG SHIPHOLDING PANAMA
47 S.A., K LINE ENERGY SHIP
MANAGEMENT, and the VLGC
GENESIS RIVER, *in rem*

Defendants.

IN THE MATTER OF KIRBY
INLAND MARINE, LP, in a cause of
exoneration from or limitation of
liability

Consolidated with

IN THE MATTER OF THE
COMPLAINT OF FPG
SHIPHOLDING PANAMA 47 S.A.
SHIP NO. 138 CO. LTD., ET AL, in a
cause for exoneration from or
limitation of liability

**UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT
PURSUANT TO RULE 54(b)**

Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and following the Court's Memorandum Opinion and Order Entering Findings of Fact and Conclusions of Law dated July 8, 2001 (Dkt. 588) (hereafter "Memorandum Opinion"), Plaintiff and

Claimant Kirby Inland Marine, LP (“Kirby”) and Defendants/Third-Party Defendants BW VLGC Limited, BW Gas AS, BW Fleet Management AS (collectively “BW”) move for entry of final judgment with respect to (i) all claims by or against Kirby, *in personam*, and the M/V VOYAGER, the tank barge MMI 3041, and the tank barge Kirby 30015T, *in rem* (collectively, including Kirby, the “Kirby Interests”), and (ii) all claims against BW, *in personam*, and the VLGC BW Oak, *in rem* (collectively, including BW, the “BW Interests”), and would show the Court as follows:

1. This action involves competing claims and/or defenses by and among the following parties: the (a) Kirby Interests, (b) the BW Interests, (c) FPG Shipholding Panama 47 S.A., K Line Energy Ship Management Co., Ltd., Ship No. 138 Co. Ltd., Ship No. 139 Co. Ltd., Genesis River Shipping S.A., *in personam*, and the VLGC GENESIS RIVER, *in rem* (collectively the “Genesis River Interests”), (d) Kawasaki Kisen Kaisha, Ltd. (“Kawasaki”), and (e) numerous persons and entities asserting claims against the Kirby Interests, the BW Interests, and/or the Genesis River Interests under the Oil Pollution Act, 33 U.S.C. § 2701 et seq. and/or other laws (the “OPA Claimants”).

2. Kirby has conferred with counsel for each of the parties in this action, including Liaison Counsel for the OPA Claimants (Dkt. 283), and no party opposes this motion.

3. The action arises from a May 10, 2019 collision in the Houston Ship Channel which, in turn, resulted in a discharge of reformat. The Court conducted a bench trial to allocate fault among the vessels involved in the collision. On July 8, 2021, pursuant to Rule 52 of the Federal Rules of Civil Procedure, the Court entered its Memorandum Opinion finding, among other things, that the negligence of the Genesis River Interests and their violations of the Inland Navigation Rules was the sole cause of the collision and that no fault should be apportioned either to the Kirby Interests or the BW Interests.

4. Kirby and the Genesis River Interests stipulated to the damages incurred by Kirby, including \$7,936,897 in collision damages and \$9,461,591 in spill-response damages. Recently, in the related action of the *United States of America v. Kirby Inland Marine, LP*, Civ. A. No. 3:21-cv-180, In the United States District Court, Southern District of Texas, the Court entered a consent decree under which Kirby must pay damages for injury to natural resources under OPA to the United States and the State of Texas in a total amount of \$2,102,115.22. *See* Order dated August 31, 2021 (Dkt. 8 in Civ. A. No. 3:21-cv-180). Under OPA, Kirby is subrogated to the rights of the United States and the State of Texas and entitled to recover from the Genesis River Interests the \$2,102,115.22 to be paid by Kirby under consent decree. *See* 33 U.S.C. §§ 2702(d)(1)(B), 2715.

5. While the claims of the OPA Claimants against the Genesis River Interests remain to be resolved, all rights and liabilities of the Kirby Interests and the BW Interests in this action have been fully adjudicated pursuant to the Memorandum Opinion. As there is no just reason for delay in entering final judgment with respect to (a) all claims by or against the Kirby Interests and (b) all claims against the BW Interests, the entry of such a final judgment in this action pursuant to Rule 54(b) of the Federal Rules of Civil Procedure is appropriate and just.

THEREFORE, Kirby and BW respectfully request that the Court enter the proposed Final Judgment Pursuant to Fed. R. Civ. P. 54(b) attached hereto as Exhibit A, the form of which has been agreed to by the Kirby Interests, the BW Interests, and the Genesis River Interests.

Respectfully submitted,

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ATTORNEYS FOR THE BW INTERESTS

CERTIFICATE OF CONFERENCE

I certify that I have conferred with counsel for the Genesis River Interests and liaison counsel for the OPA Claimants, who stated that they are not opposed to this motion.

/s/ Amy Snell
Amy Snell

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record on September 8th, 2021, via eFile.

/s/ George T. Shipley
George T. Shipley